

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JULIA ZIMMERMAN,

Plaintiff,

Case No. 2:23-cv-11634-NGE-APP

vs.

Judge: Hon. Nancy G. Edmunds

Magistrate Judge:

Hon. Anthony P. Patti

ELIZABETH A. PENSLER, D.O., PLLC
(d/b/a “Pensler Vein and Vascular”,
“Pensler Vein and Vascular Surgical
Institute”, and “Elizabeth Face +
Body Med Spa”) *et al.*,

Defendants.

DEBORAH GORDON LAW

Deborah L. Gordon (P27058)

Elizabeth Marzotto Taylor (P82061)

Sarah Gordon Thomas (P83935)

Molly Savage (P84472)

Attorneys for the Plaintiff

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THE HEALTH LAW

PARTNERS, P.C.

Clinton Mikel (P73496)

Attorneys for the Defendants

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(d/b/a “Pensler Vein and Vascular

“Pensler Vein and Vascular Surgical

Institute”, and “Elizabeth Face +

Body Med Spa”); Elizabeth Med

Spa, PLLC Derek L. Hill, D.O.,

PLLC; (d/b/a “Hill Orthopedics”),

Elizabeth Pensler, D.O. and

Derek Hill, D.O.

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**DEFENDANTS’ MOTION FOR AN EXTENSION OF
TIME TO PLEAD, MOVE OR OTHERWISE RESPOND
TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

Defendants, Elizabeth A. Pensler, D.O., PLLC (d/b/a “Pensler Vein and Vascular”, “Pensler Vein and Vascular Surgical Institute”, and “Elizabeth Face + Body Med Spa”); Elizabeth Med Spa, PLLC; Derek L. Hill, D.O., PLLC (d/b/a “Hill Orthopedics”); Elizabeth Pensler, D.O.; and Derek Hill, D.O.

(“**Defendants**”) by and through their counsel, The Health Law Partners, P.C., move under Federal Rules of Civil Procedure (“**FRCP**”) 6(b)(1)(A) and Local Rule (“**LR**”) 7.1(a), for a forty-five (45) day extension of time to plead, move, or otherwise respond to Plaintiff’s First Amended Complaint (“**Amended Complaint**”). In support of its Motion, Defendants rely upon the rules, law, and argument set forth their Brief in Support and state as follows:

1. On July 10, 2023, Julia Zimmerman (“**Plaintiff**”), filed the original Complaint. (Dkt. 1). On July 19, 2023, *and prior to Defense Counsel entering an appearance*, Plaintiff filed an Amended Complaint. (Dkt. 11).

2. Pursuant to LR 7.1(a), on July 26, 2023, Defense Counsel emailed Plaintiff’s Counsel, requesting a 45-day extension to respond to the Complaint. (“**EX. A**”). The same day, Plaintiff’s Counsel, Elizabeth Marzotto Taylor (“**Ms. Marzotto Taylor**”) emailed Defense Counsel, provided an Amended Complaint for the first time, did not concur with a 45-day extension, and stated she would only grant “a *one-week* extension.” (“**EX. B**”).

3. Thinking that a miscommunication must have occurred, on July 26, 2023, Defense Counsel, Clinton Mikel, emailed Ms. Marzotto Taylor, explaining

in-depth the reasons for the requested extension, including: (1) Defense Counsels' busy client docket (transactional and litigation); (2) that Defense Counsel have pre-planned vacations; (3) summertime camp/childcare logistics; (4) out-of-town cases and work travel; (5) Plaintiff named five defendants (two individuals and three entities, with associated d/b/a's); (6) that Defense Counsel was unsure about joint representation; and (7) Defense Counsel still needed to evaluate changes to the Amended Complaint, internally and with the clients. ("EX. C"). Mr. Mikel requested the response to the Amended Complaint be due on or before September 23, 2023. (*Id.*).

4. On July 27, 2023, Ms. Marzotto Taylor emailed Mr. Mikel and stated her firm "does not grant 45-day extensions for the purpose of an Answer, as [it] would create a disadvantage to [her] client" and Defendants were "served with the amended complaint by mail on July 25." ("EX. D"). Ms. Marzotto Taylor did not explain how a first extension of time would disadvantage her client.

5. On July 27, 2023, Mr. Mikel emailed Ms. Marzotto Taylor and advised that Defense Counsel is "not sure that we are answering/counterclaiming as opposed to filing a Motion to Dismiss... Does that change anything?" ("EX. E", p. 2). Mr. Mikel said, "if we only get an extra week...we will have to file a Motion" (*Id.*). Ms. Marzotto Taylor did not change her position. (*Id.*, p. 2).

6. In furtherance of LR 7.1(a), Defense Counsel arranged a telephone meet-and confer for Monday, July 31, 2023, at 2:00 p.m. Mr. Mikel stated, "if we

must waste the Court’s time on this, I want to make sure that we have tried every angle.” (*Id.*). Defense Counsel “***waited 20 minutes on the call but [Plaintiff’s Counsel] didn’t join...***” (“EX. F”). Mr. Mikel asked via email if “everything is OK”, understanding that fellow attorneys have hectic personal/professional lives and missed calls happen. (*Id.*)

7. Mr. Mikel further detailed why the extension was needed, including: (1) the clients are currently in Spain and getting back this week; (2) Mr. Mikel’s father-in-law is going to hospice shortly in Missouri, and travel between will be added; (3) Mr. Mikel’s mother is having surgery to remove thyroid cancer at the end of August; and (4) the Client is still waiting to hear if insurance panel counsel may be appointed/take over. (*Id.*).

8. Mr. Mikel advised Ms. Marzotto Taylor that he “**ha[s] never been in a position of begging opposing counsel for a standard extension and [is] perplexed at [the] opposition.**” (*Id.*). Indeed, it is exceedingly rare to need to go in-depth with fellow professionals on extension requests. In the spirit of compromise, Mr. Mikel stated Defendants “would settle on a 30-day negotiated extension until September 11, 2023, and, of course, would grant [Plaintiff] reciprocity. [But] If [Defendants] have to file the Motion, though, that takes additional time off our plate and we would be asking for 45-days.” (*Id.*).

9. Defense Counsel, Deborah Gordon (“**Ms. Gordon**”), who was copied on the email after the missed meet-and-confer, responded by email, and advised

Mr. Mikel to call her. Defense Counsel contacted Mr. Gordon via telephone on July 31, 2023. (“EX. G”).

10. During the re-scheduled meet-and-confer, Ms. Gordon said they could not grant the extension because of three or possibly four trials coming up, and Defendants’ response if an extension was granted would conflict with those trials. Defense Counsel again offered to accommodate Plaintiff with corollary or greater extensions. Ms. Gordon stated that extending the briefing schedule would prejudice her client, in addition to conflicting with her trial schedule. Ms. Gordon said they might *consider* a two-week extension but could not commit without determining if the briefing schedule conflicted with their trial schedule. (“EX. H”).

11. Ironically, Ms. Gordon cited her firm’s own busy schedule as the basis to refuse an extension, when this is the reason Defense Counsel sought their extension. Mr. Mikel advised Ms. Gordon that two weeks was not enough so she didn’t need to *consider* 2-weeks and get back to him, necessitating this motion. (*Id.*). Ms. Gordon indicated that she would oppose this Motion.

12. Plaintiff claims it served Defendants with the Amended Complaint on July 25, 2023, by mail. Pursuant to FRCP 6 and 15, Defendants are required to respond on the date of response for the original pleading or 14 days, which is ever longer -- plus an additional three days for mail. The response dates for the Original Complaint are August 7 and 8, 2023. Thus, the response to the Amended Complaint would be due on **August 11, 2023** (14-days plus 3 days for mail service).

13. As Plaintiff's Counsel refused to grant a simple routine 30-days extension of time, Defense Counsel requests that the Court grant the originally requested 45-day extension of time from the original due date (August 11, 2023) and issue an order permitting Defendants to plead, move, or otherwise respond to the Amended Complaint on or before **September 25, 2023**.

14. Undersigned Defense Counsel, affirms and declares under the penalty of perjury, that the above is true and accurate and that the Exhibits are true and accurate copies of emails sent in the normal course of business.

WHEREFORE, Defendants, requests that this Court enter an Order:

A. Granting Defendants, a 45-day extension of time to plead, move or otherwise respond to the First Amended Complaint (Dkt. 11) and ordering Defendants to serve and file said response on or before **September 25, 2023** and granting all other relief to which Defendants are entitled under the law.

Dated: August 1, 2023

Respectfully submitted,
THE HEALTH LAW PARTNERS, P.C.

/s/ Clinton Mikel

Clinton Mikel, (P73496),

Attorney for Defendants

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**DEFENDANTS’ BRIEF IN SUPPORT OF MOTION FOR AN EXTENSION
OF TIME TO PLEAD, MOVE OR OTHERWISE RESPOND TO THE
PLAINTIFF’S FIRST AMENDED COMPLAINT**

STATEMENT OF THE ISSUE PRESENTED

Should the Court grant all Defendants a 45-day extension of time to plead, move or otherwise respond the First Amended Complaint?

Defendants' Answer: Yes.

Plaintiff's Answer: No.

MOST CONTROLLING AUTHORITY

Federal Rules of Civil Procedure 6(b)(1)(A)

ARGUMENT

This Court may extend a response date either on its own or upon a request that is made before the time to act has expired and upon good cause shown. *See* FRCP 6(b)(1)(A). The Local Rules for the Eastern District of Michigan confirm that FRCP 6(b)(1)(A) “permits a person to seek an enlargement of time ‘with or without motion or notice . . . if a request is made before the original time or its extension expires. . . .’” [and] *the Court generally prefers that such relief be sought by stipulation or motion*...[and] LR 7.1(a) still applies. LR 7.1 (emphasis added). The court retains the inherent authority to alter a briefing schedule. LR 7.1.

Moreover, Honorable Nancy G. Edmund’s individual rules state that “Court routinely grants extension requests if they are timely filed.” Pursuant to FRCP 15, “[u]nless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.” Pursuant to FRCP 6, three days are added for service of pleadings by mail. FRCP 6 and 15.

Based upon the above motion, Defendants’ response to the Amended Complaint is due on August 11, 2023. **Therefore, this motion is being submitted in advance of the deadline and is therefore timely.**

Pursuant to LR 7.1(a) Defendants sought concurrence for the motion and

complied with the meet-and-confer requirements. Plaintiff's Counsel did not concur in the motion. Defense Counsel agreed to compromise and asked for a 30-day extension. But Plaintiff's counsel still refused.

Finally, Defendants have cited good cause for the requested extension, including busy litigation and transaction dockets, pre-planned family vacations, summer child-care issues, family members entering hospice and surgery, the number of Defendants and claims in the case, potential insurance coverage/panel counsel issues, as well as the clients currently being in Spain and returning later in the week.

Plaintiff ironically cited a busy schedule as the reason for not granting Defendants' first request for an extension when Defense Counsel's busy schedule and personal situation are the reasons for the requested extension. Defense Counsel agree to grant the same or even a more copious extension to Plaintiff.

Defendants' Counsel are sheepish about, and apologize for, burdening the Court with an unstipulated request/Motion for extension of time, but have no other course to follow. For all these reasons, the Court should grant the requested 45-day extension of time and issue an order permitting all Defendants to plead, move, or otherwise respond to the First Amended Complaint on or before September 25, 2023, and any other relief to which the Defendants are entitled to.

Dated: August 1, 2023,

Respectfully submitted,
THE HEALTH LAW PARTNERS, P.C.

/s/ Clinton Mikel
Clinton Mikel, (P73496),
Attorney for Defendants

Elizabeth A. Pensler, D.O., PLLC (d/b/a Pensler Vein and Vascular, Pensler Vein and Vascular Surgical Institute, and Elizabeth Face + Body Med Spa, Elizabeth Med Spa, PLLC, Derek L. Hill, D.O., PLLC d/b/a Hill Orthopedics, Elizabeth Pensler, D.O. and Derek Hill, D.O.

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CERTIFICATE OF SERVICE

I certify that on August 1, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send email notification of electronic filing to counsel for all parties of record.

s/Clinton Mikel

Clinton Mikel

The Health Law Partners, P.C.

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